



Alan M. Burger

Member

West Palm Beach

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“ Every business problem has at least one common sense, business solution. My job is to efficiently identify solutions and then help you implement the chosen solution. ”

Practice Focus

- Franchising, licensing, and distribution
- Franchise restructuring
- Business counseling
- Family and closely held business counseling
- Directors and officers litigation
- Real estate litigation
- Data privacy and cybersecurity

Consider retaining Alan for:

- Complex business litigation
- Franchise advice or related litigation
- "Bet the farm" litigation
- Commercial litigation including alternative or contingent fee arrangements

Over the course of his nearly 30 year career, Alan has developed a unique ability to understand and manage interpersonal and complex business relationships. He uses these skills to negotiate and structure transactions, mitigate risk, mitigate claims or avoid litigation. Alan is also a strong proponent of pre-suit dispute resolution formats such as pre-suit settlement meetings or pre-suit mediation.

Alan is the co-chair of the McDonald Hopkins' franchise group. In that capacity Alan assists franchisors and franchisees with various franchise opportunities or challenges. He has facilitated the drafting of franchise offerings and entity structuring. He has also overseen purchase and sales of multi-unit franchisees, including multi-unit distressed franchisees. Finally, he has assisted franchisee groups or individual franchisees with dispute resolution including suit avoidance. He has mediated hundreds of disputes.

Alan also serves as counsel for businesses or individuals with business interests. In those roles he advises on day-to-day business issues. When necessary, Alan litigates. He has acted as lead counsel in hundreds of lawsuits. And, Alan acts as counsel in both lawsuits and arbitration proceedings. His work involves several civil litigation areas including: large-scale commercial and complex foreclosures, disputes amongst owners, franchisee/franchisor disputes, commercial landlord tenant or eviction issues, assertions of breaches of duty,

contract, trade secret theft and non-compete violations. Many disputes involved ten to hundreds of millions of dollars. On the recovery side, Alan has multiple seven figure jury wins and multiple seven figure settlements. On the defense side, he has multiple “victories” including zero judgments or pennies on the dollar.

Alan has achieved the significant accomplishment of having two arbitration awards vacated by the trial court. Review of those orders was upheld by the intermediate Appellate Court and, in one instance, the Florida Supreme Court.

Alan has also been involved in issues related to data privacy and cybersecurity since 2004, once serving as the co-chair to the McDonald Hopkins data privacy and cybersecurity practice.

Alan earned a J.D. from California Western School of Law and an LL.M. in real property law from the University of Miami. He received a B.A. from the University of Florida.

Representative Cases/Matters

CASES OR MATTERS OF NATIONAL INTEREST

- Aviation Performance Solutions, LLC. v. Matthews et. al., 2020 WL 2488666
- Aviation Performance Solutions, LLC. v. Matthews, 2020 WL 883383
- *Swaters v. Concentra*, \$6 million settlement, August, 2019
- "Green Bay Packers, others seek bankruptcy for West Palm firm that collected race fees," Palm Beach Post, April 10, 2018
- "Hollywood Hologram Wars: Vicious Legal Feud Behind Virtual Mariah, Marilyn and Michael," Variety, May 28, 2015
- "How Nine Guys made Up Five Guy," South Florida Business Journal, December 12, 2014
- "Alki David Insists Hitler Photo Not Intended As a Threat in Michael Jackson Hologram Lawsuit," Yahoo News, September 18, 2014
- "Five Guys franchisee files for Chapter 11 Bankruptcy," South Florida Business Journal, June 27, 2014
- "Devonshire in Palm Beach Gardens hit with \$158 million foreclosure," Palm Beach Post, August 16, 2012
- "Playing Chicken, KFC Telling U.S. Franchises to Remodel Stores or Shut Down," Franchise Times, 2011
- "FAU Profs Settle Dispute, Build Robots," Multiple outlets, February 2005

FRANCHISE RELATIONSHIPS

- Counsel to national franchisor
- Counsel to start-up franchisors, designed entire franchise system.
- Counsel to national franchisees, involved in day-to-day business issues and litigation.
- Counsel to franchisees in multi-unit purchases.
- Counsel to several multi-unit franchisees in distressed situations.
- Counsel to franchisees in dispute with franchisors.
- Counsel to franchisee groups in disputes with franchisors.
- Assisted large group of franchisees in achieving substantial pre-arbitration and pre-suit has settlement with franchisor.

COMPLEX BUSINESS LITIGATION

- Lead counsel in arbitration against a prominent securities broker/dealer for securities fraud and unfair and deceptive trade practices resulting in a confidential seven figure settlement.
- Lead counsel in successful defense of a control person of a NASD broker dealer in a NASD arbitration proceeding seeking millions of dollars in which all other respondents were found liable or settled.
- Counsel in multiple “family companies” including intra-company or intra-family disputes.
- Successfully defended a lender in a suit asserting a constructive trust against millions of dollars.
- Co-counsel in class action with agreed upon injunctive and declaratory relief having an approximate value in the millions of dollars.
- Co-lead counsel in suit by pilot accused of flying while under the influence of heroin and cocaine. \$6 million dollar payment after jury verdict entered for his client.
- Defense co-counsel in a suit seeking \$25 million which was settled for pennies on the dollar.
- Represented public company over the course of years in multiple commercial lawsuits including employment-related claims, lender related claims, and claims arising from complex contractual relationships.
- Represented private company with respect to claims made by a minority interest holder where minority interest holder asserted value of its claims exceeded \$1 billion.
- Represented high profile CEO of a public company in various claims arising from the bankruptcy of the entity.
- Lead counsel in approximately 200 commercial evictions.
- Multiple reported appellate decisions.
- Obtained injunction against high profile CEO for cyber-stalking a competitor’s CEO.
- Achieved an over 60 million dollar jury verdict for a client whose business was stolen by a competitor.

TRADE SECRET, NON-COMPETE

- Counsel in high profile non-compete/restrictive covenant case in which client was sued for \$20 million and plaintiff obtained a zero verdict.
- Lead counsel in tortious interference and trade secret theft suit in which a jury entered verdict for client in excess of \$60 million.
- Successfully defended entities and employees who were alleged to have violated employment, non-competition or trade secret agreements.
- Successfully obtained injunctive relief against persons or entities violating non-compete agreements.

REAL ESTATE

- Lead counsel in approximately 200 commercial evictions.
- Lead counsel in which a client disposed of a portion of its apartment building portfolio for in excess of \$100 million
- Lead counsel in defense of multiple suits brought against owners, landlords, and tenants for allegedly violating the ADA (Americans with Disabilities Act).
- Defense counsel in multiple high profile foreclosure cases.
- Represented assisted living/senior care center in defense of a \$125 million mortgage foreclosure suit.

DATA PRIVACY AND CYBERSECURITY

- Counsel to several different universities whose confidential information relating to students was compromised.
- Lead counsel in successful defense of a software piracy suit brought by one of the world's largest software companies, seeking tens of millions of dollars.

Admissions - Court

- Courts of the District of Columbia
- Southern District of Florida Trial Bar
- U.S. District Court for the Middle District of Florida
- U.S. District Court for the Southern District of Florida

Admissions - State

- District of Columbia
- Florida

Honors and Awards

- AV Preeminent® by Martindale-Hubbell
- Named one of the *Best Lawyers in America* (2019-2021)
- Selected for inclusion in *Florida Super Lawyers* (2009, 2010, 2012-2015, 2017-2019)
- Selected for inclusion in the *Corporate Counsel Edition of Super Lawyers* for Litigation
- 2015 Legal Aid Society of Palm Beach County Real Property Law Award
- Selected for inclusion in *Florida Legal Elite* (2011)
- Named one of "South Florida's Top Lawyers," *Miami Metro Magazine* (2001)
- Titus Center for Franchising, Advisory Board, Chair of the Curriculum Committee

Alerts

- Department of Labor releases new final guidance on joint employer standard

Blog Posts

- 3 common litigation Q&As
- The practical reality of business and contractual relationships during COVID-19
- Sole discretion and your franchise agreement
- Joint employer liability: It's important to document and stay in your lane
- Joint employer and agency exposure in the franchise relationship
- Mediation and franchise relationships
- "Does and "Will" are not equal, or Arbitration clauses are tricky things: Federal court in Connecticut rules against franchisor, allows Colorado lawsuit to proceed in court

- Court upholds arbitration decision and allows franchisee to rescind franchise agreement
- Four takeaways from the International Franchise Association Legal Symposium
- How to use intellectual property to increase franchisor entity value
- 7 basic considerations before entering a franchise relationship
- Does the ADA apply to websites?
- The franchise, the FTC, deception, and data protection

News

- Lawyer of the Year honorees Riley and Welin among 42 McDonald Hopkins attorneys recognized as 2021 Best Lawyers
- 41 attorneys from McDonald Hopkins recognized as 2020 Best Lawyers®
- Five McDonald Hopkins attorneys recognized by Florida Super Lawyers
- Four attorneys at McDonald Hopkins named Florida Super Lawyers
- Six attorneys at McDonald Hopkins named Florida Super Lawyers
- Five McDonald Hopkins attorneys honored as top attorneys in Florida

External Publications

- "Don't Risk Customers' Data - Protect your business when a vendor handles clients' personal information;" Scotsman Guide Commercial Edition, January, 2011
- "What Indemnification Means to You;" Scotsman Guide Commercial Edition, April 2010
- "What are the options when a tenant files for bankruptcy?" Commercial Investment Real Estate, January 2010
- "Commercial Evictions In Florida;" National Business Institute, 2003
- "Real Estate Sales Transactions;" Sterling Education Services, Inc., 2004
- "Practical Real Estate Title Skills in Florida;" Half Moon LLC, 2004
- "Data Security and Compliance;" Lorman Education Services, 2005
- "Landlord and Tenant Law in Florida;" Lorman Education Services, 2003-2006, 2008
- "What is 'Material'? Giving Definition to the Standard for Contract Rescission and Document Amendments;" Ralph E. Boyer Institutes Real Property and Condominium Law, Eighteenth Institute on Real Property Law/Thirtieth Institute on Condominium and Cluster Developments, November 2005
- "Drafting Commercial Real Estate Leases: The Ins and Outs of Protecting our Interests;" National Business Institute, 2006
- "Evictions;" Lorman Education Services, 2007
- "Landlord-Tenant Law Beyond the Basics;" Sterling Educational Services, 2009
- Contributor: "Secure Data Destruction for Protecting Business Data;" Sarbanes-Oxley Compliance Journal: News
- "Innovative Uses for Special Assessment: Building Infrastructural Without Raising Taxes;" University of Miami, Business Law Journal 1989

Events

- Selling Franchises Bootcamp | Tuesday, February 18, 2020

Speaking Engagements

- Lecturer, Titus Center for Franchising, Palm Beach Atlantic University: Franchise Terminations, Antitrust, Non-Compete Agreements, Liquidated Damages
- Lecturer, Titus Center for Franchising, Palm Beach Atlantic University: Franchise Law 101
- Franchise Relationships and Health Care Reform (Panelist)
- Network Privacy & Cyber Risk: The 21st Century Challenge, 35th Annual Florida RIMS Educational Conference (Panelist), 2010
- Commercial Tenant Bankruptcy: Legal Strategies for Landlords And Tenants, Strafford Publications (Speaker), 2010
- Protecting Data and the Importance of a Data Policy, In House Counsel, National Quick Service Restaurant Franchisor
- Protecting Data and the Importance of a Data Policy, In House Counsel, International Power Company
- University of Miami Forum on Small Practice (Speaker)